



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Francis L. Daniel  
Tidewater Regional Director  
(757) 518-2000

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO ASPHALT ROADS AND MATERIALS COMPANY, INCORPORATED Permit No. VAR550151

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1184, 62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Asphalt Roads and Materials Company, Incorporated, for resolving certain violations of environmental law and/or regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "ARM" means Asphalt Roads and Materials Company, Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Regulations" means 9 VAC 25-151-10 *et seq.* – General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity.

9. "Permit" means General VPDES Permit No. VAR550151.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. ARM owns and operates an asphalt manufacturing and paving facility in Virginia Beach, Virginia. On October 7, 1999, ARM obtained coverage under the Permit for storm water discharges associated with industrial activities. The Permit expires on June 30, 2004.
2. Section 62.1-44.5.A (1) of the Code and Part II. F of the Permit states: "Except in compliance with a VPDES permit, or another permit issued by the Board, it shall be unlawful for any person to: discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances..."
3. Section 9 VAC 25-151-70.E (12) of the Regulations, and Part II. L of the Permit requires the permittee to comply with all conditions of the Permit.
4. Part I.D.7 of the Permit requires the permittee to perform and document a visual examination of a storm water discharge associated with industrial activity for each outfall. Part III of the Permit requires ARM to develop, implement, and maintain a current storm water pollution prevention plan (SWP3). In addition, the SWP3 shall describe and ensure the implementation of practices that are to be used to reduce pollutants in storm water discharges. Part III.D.3.d of the Permit requires ARM to perform, document, and maintain records of quarterly site inspections. Part III.D.4 of the Permit requires ARM to perform annual comprehensive site compliance evaluations.
5. On February 12, 2003, DEQ inspected ARM and found that a current SWP3 was not maintained and that ARM failed to conduct visual examinations of storm water quality for the third and fourth quarters of 2002. Further investigation revealed that ARM failed to conduct quarterly site inspections and quarterly visual examinations of storm water quality for nine quarters since October 7, 1999 (4<sup>th</sup> Qtr. 1999; 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Qtrs. 2000; 4<sup>th</sup> Qtr. 2001; 3<sup>rd</sup> and 4<sup>th</sup> Qtrs. 2002; and 1<sup>st</sup> Qtr. 2003). Comprehensive site compliance evaluations were not performed for the following years: 1999-2000, 2000-2001, and 2001-2002. Failure to maintain a current SWP3 and perform comprehensive site compliance evaluations, and facility inspections were identified as violations during a previous inspection conducted in July 2001.
6. Construction activity is occurring on site and causing erosion and sediment (E&S) control and housekeeping issues. The drop inlet leading to outfall 001 does not have E&S controls preventing the potential discharge of sediment. An asphalt reclamation pile borders a creek on one side of the property. The asphalt reclamation pile is listed as a potential source for pollutants in the SWP3 but there are no controls in place to prevent the waste asphalt from entering the creek.
7. On March 26, 2003, DEQ issued Notice of Violation No. W2003-03-T-1018 to ARM for the above mentioned violations.

### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders ARM, and ARM agrees, to perform the actions described in Appendix A of this

Order. In addition, the Board orders ARM, and ARM voluntarily agrees, to pay a civil charge of \$6,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include ARM's Federal Identification Number and shall note on its face that the payment is being made in accordance with the requirements of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of ARM, for good cause shown by ARM, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to ARM by DEQ on March 26, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, ARM admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. ARM consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. ARM declares it has received fair and due process under the Administrative Process Act, Va. Code §2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by ARM to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. ARM shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. ARM shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ARM shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which ARM intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and ARM. Notwithstanding the foregoing, ARM agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until ARM petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. In addition, the Director or the Board may terminate this Order in his or its sole discretion upon 30 days' written notice to ARM. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ARM from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, ARM voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Oct 29, 2003.

Francis L. Daniel  
Francis L. Daniel, Tidewater Regional Office for  
Robert G. Burnley, Director  
Department of Environmental Quality

ARM voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: August 4, 2003

Commonwealth of Virginia  
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 4<sup>th</sup> day of  
AUGUST, 2003, by FRED A. HAYMON, who is  
(name)

PRESIDENT of ARM, on behalf of the Corporation.  
(title)

[Signature]  
Notary Public

My commission expires: 3-31-06

## APPENDIX A

ARM shall:

1. By **September 1, 2003**, perform and document a site inspection as required by the Permit. By **September 8, 2003**, submit a copy of the inspection report to DEQ for review and comment. Upon receiving comments, ARM shall immediately incorporate them into the inspection report.
2. During the next qualifying storm event, ARM shall perform and document a visual examination of storm water quality as required by the permit. ARM shall submit a copy of the visual examination to DEQ for review and comment within ten days after the examination is performed.
3. By **September 1, 2003**, install and maintain best management practices in the area of the waste asphalt pile to ensure the waste asphalt does not enter the creek. By **September 8, 2003**, ARM shall submit to DEQ photographic documentation showing best management practices have been installed.
4. By **September 1, 2003**, install and maintain best management practices around outfall 001 and 002 to help prevent potential pollutants from leaving the site. By **September 8, 2003**, ARM shall submit to DEQ photographic documentation showing best management practices have been installed.
5. Within 30 days of the removal of the Barber Greene Asphalt Plant, ARM shall review and revise the SWP3 to reflect the current conditions on site. New drainage patterns, potential pollutant sources, best management practices, and revisions of the inspection form and site map should be addressed in the revised SWP3. Within 45 days of its removal ARM shall notify DEQ in writing of the completion of the Barber Greene Asphalt Plant removal and shall submit the revised SWP3 to DEQ for review and approval.
6. All submittals and reports required by this Appendix A shall be mailed to:  
Francis L. Daniel  
Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462